Canada. Capital and Corporal Punishment and Lotteries, Joint Committee of the Senate and the House of Commons on

FIRST SESSION—TWENTY-SECOND PARLIAMENT
1953-54

Joint Committee of the Senate and the House of Commons

ON

CAPITAL AND CORPORAL PUNISHMENT AND LOTTERIES

Joint Chairmen:—The Honourable Senator Salter A. Hayden

and

Mr. Don F. Brown, M.P.

MINUTES OF PROCEEDINGS AND EVIDENCE

No. 2

THURSDAY, MARCH 4, 1954

WITNESS:

Mr. William B. Common, Q.C., Director of Public Prosecutions, Ontario Attorney-General's Department.

Appendix: Questionnaire on Capital and Corporal Punishment and Lotteries sent to Provincial Attorneys-General.

EDMOND CLOUTIER, C.M.G., O.A., D.S.P.
QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA, 1954.

COMMITTEE MEMBERSHIP

For the Senate (10)

Hon. Walter M. Aseltine
Hon. Élie Beauregard
Hon. Paul Henri Bouffard
Hon. John W. de B. Farris
Hon. Muriel McQueen Fergusson
Hon. Salter A. Hayden (*Joint Chairman*)
Hon. Nancy Hodges
Hon. John A. McDonald
Hon. Arthur W. Roebuck
Hon. Clarence Joseph Veniot

For the House of Commons (17)

Miss Sybil Bennett
Mr. Maurice Boisvert
Mr. J. E. Brown
Mr. Don. F. Brown (*Joint Chairman*)
Mr. A. J. P. Cameron
Mr. Hector Dupuis
Mr. F. T. Fairey
Mr. E. D. Fulton
Hon. Stuart S. Garson
Mr. A. R. Lusby
Mr. R. W. Mitchell
Mr. H. J. Murphy
Mr. F. D. Shaw
Mrs. Ann Shipley
Mr. W. Ross Thatcher
Mr. Phillippe Valois
Mr. H. E. Winch

A. Small,
Clerk of the Committee.

ORDER OF REFERENCE

FRIDAY, March 5, 1954.

Ordered,—That the name of Miss Bennett be substituted for that of Mr. Montgomery on the said Committee.

Attest.

LEON J. RAYMOND,
Clerk of the House.

MINUTES OF PROCEEDINGS

THURSDAY, March 4, 1954.

The Joint Committee of the Senate and the House of Commons on Capital and Corporal Punishment and Lotteries met at 4.00 p.m. The Joint Chairman, Mr. Don. F. Brown, presided.

Present:

The Senate: The Honourable Senators Aseltine, Farris, Fergusson, Hodges, and McDonald.—(5).

The House of Commons: Messrs. Boisvert Brown (*Brantford*), Brown (*Essex West*), Dupuis, Fairey, Fulton, Garson, Lusby, Mitchell (*London*), Shaw, Shipley (Mrs.), Valois, and Winch.—(13).

In attendance: Mr. William B. Common, Q.C., Director of Public Prosecutions, Ontario Attorney-General's Department, Toronto, Ontario; Mr. D. G. Blair, Counsel to the Committee.

On motion of the Honourable Senator McDonald, seconded by the Honourable Senator Aseltine, the Honourable Senator Nancy Hodges was elected to act for the day on behalf of the Joint Chairman representing the Senate due to his unavoidable absence.

The Presiding Chairman notified the Committee that a copy of the Report of the U.K. Royal Commission on Capital Punishment, 1949-53, has been mailed to each member.

On motion of Mr. Winch,

Ordered,—That the questionnaire prepared by Counsel to the Committee, as revised by the Subcommittee on Agenda and Procedure, for submission to the provincial Attorneys-General for the purpose of preparing their representations to the Committee, be printed as an appendix to this day's Minutes of Proceedings and Evidence.

Mr. Common was called and heard on the various phases, in sequence, of a criminal prosecution in a capital punishment case and was questioned thereon.

During the course of Mr. Common's evidence, it was agreed that he be invited to appear before the Committee in the near future in respect of corporal punishment and lotteries.

On behalf of the Committee, the Presiding Chairman thanked Mr. Common for his presentation.

The witness retired.

At 6.00 p.m., the Committee adjourned to meet again at 11.00 a.m., Tuesday, March 9, 1954.

A. SMALL,
Clerk of the Committee.

EVIDENCE

MARCH 4, 1954,
4.00 p.m.

The PRESIDING CHAIRMAN: Come to order, please, ladies and gentlemen. Unfortunately, Senator Hayden has to be away today and I think the Senate chair should be filled by some member of the Senate. Senator John McDonald.

Hon. Mr. MCDONALD: Mr. Chairman, ladies and gentlemen, in the absence of Senator Hayden today I would nominate Senator Hodges for today's meeting as co-chairman.

The PRESIDING CHAIRMAN: Seconded by Senator Aseltine.

Carried.

Senator Hodges, would you come up, please?

(Senator Hodges took the chair as co-chairman).

The PRESIDING CHAIRMAN: You have before you, or in your mail boxes, the report of the United Kingdom Royal Commission on Capital Punishment. If there is anyone who has not received that report please let us know and we will see that it is furnished to you at once. Now a motion would also be in order to print the questionnaire to the provincial Attorneys-General which has been prepared by counsel to the committee and checked by the subcommittee on agenda and procedure, as an appendix to the proceedings of today's meeting.

Moved by Mr. Winch, seconded by Mrs. Shipley, that the questionnaire be appended to the proceedings of today's meeting.

Carried.

(See Appendix).

We are most fortunate today in that we have with us Mr. W. B. Common, Q.C., who is Crown Counsel of the Attorney General's Department of the province of Ontario. We have asked Mr. Common to come here on very short notice—mind you, he does not need much notice—to see if he would help us in our deliberations in obtaining a groundwork as to the law and procedure on matters of capital punishment, corporal punishment and, I believe, lotteries. He has undertaken to come here to give us some of that groundwork from the point of view of a crown counsel. If it is your pleasure, I would like to call upon Mr. Common to say a few words, if he so desires, and then, at the completion of any presentation that he may care to make, the committee members will be at liberty to ask questions of Mr. Common. If that is in order, I will call upon Mr. Common.

Mr. W. B. Common, Q.C., Director of Public Prosecutions, Attorney General's Department, Province of Ontario, called:

The WITNESS: Mr. Chairman and members of the committee, I think possibly the best way to deal with what has been called the groundwork of a criminal prosecution in a capital case is to trace the various steps that are required

in a prosecution of that nature from, shall we say, the finding of the body in the first instance, tracing the various steps right through the investigation and trial to its final termination. Is that what you had in mind?

The PRESIDING CHAIRMAN: Could I ask you first if you would be prepared to comment on corporal punishment and lotteries?

The WITNESS: I had not come prepared for that.

The PRESIDING CHAIRMAN: Probably the committee will request then that you confine yourself to capital punishment, in the first instance.

The WITNESS: Very well.

The PRESIDING CHAIRMAN: And then we will proceed to corporal punishment and lotteries.

Mr. FULTON: Mr. Chairman, I am sorry. I wonder if Mr. Common could first put on the record, for the benefit of those who do not know it, the official position that he holds in the Attorney General's Department.

The WITNESS: I am director of Public Prosecutions for the province of Ontario, attached to the Attorney General's Department.

Mr. FULTON: Thank you.

The PRESIDING CHAIRMAN: Thank you very much.

The WITNESS: The first thing which forms the basis of any criminal prosecution would be the finding of a deceased's body. I am dealing now with the usual pattern that a prosecution follows. The body is sometimes discovered by a citizen, and usually the police, of course, are notified in the first instance.

The coroner of the particular county or district in Ontario is then immediately notified and he proceeds to the location where the body is found and makes a preliminary investigation. In the province of Ontario, we do not usually hold an inquest under our local Coroners Act if we intend proceeding with the charge. When I say "intend proceeding with the charge", I have in mind a named suspect. I think the procedure is somewhat different, for instance, in the province of Quebec, where an inquest invariably is held and a coroner's warrant is issued to the person named by the coroner's inquisition as being responsible for the death. We do not follow that practice in Ontario. If we have a suspect in mind, an inquest is not held, because we feel that an inquest, where the laws of evidence are rather loosely applied, something might come out which would be prejudicial to a fair trial of an accused person involved in the crime.

After the coroner has made his preliminary investigation, a post-mortem is done by a qualified pathologist. In our province we have the entire province zoned for pathological purposes and in each zone we have a responsible pathologist, usually with private practitioner experience in pathology, who is attached to our department for that purpose, and a complete post-mortem is done.

And then the police, of course, enter upon the investigation. If the homicide has taken place in an organized municipality which has its own organized police force, that force conducts the examination and the police investigation. The services of the criminal investigation department of the Ontario Provincial Police are at the disposal of any municipal force that desires to utilize them. These men have had considerable experience in the investigation of crime. For the purposes of the record I might remind the members of the committee, in Ontario we have an Ontario Provincial Police force. We are not policed by the Royal Canadian Mounted Police as in some of the other provinces, so our police force in Ontario is comprised of (a) the municipal police force, and (b) the Ontario Provincial Police force where there is no municipal police force in existence.

The C.I.B. department is available to any municipal force for the purposes of investigation, and the usual police investigation goes forward in collating the evidence and working up the case, collecting the exhibits and obtaining a statement from the accused, if such is available, collecting statements from witnesses, and then the matter is placed before the local Crown attorney.

In Ontario we have a system of Crown attorneys who are directly responsible through me to my minister. I think we have some 46 Crown attorneys in the various counties and districts, most of whom are full time men. There are very, very few who work part time. The vast majority are full time representatives of the Attorney General's department.

Now, when a murder occurs in Ontario, or a homicide which we suspect is murder, and a person is arrested and charged with that offence, one of my first duties that I follow is to communicate immediately with the local crown attorney, with a view to ascertaining whether or not a psychiatric examination is indicated. If the circumstances surrounding the homicide are such that there is even a suggestion that there is a mental condition present in the person arrested, I will then request a psychiatrist from our Department of Health and Welfare, where we have a number of full-time psychiatrists, to proceed to the local jail where the man is incarcerated and there to conduct an extensive psychiatric examination. Notwithstanding the results of that examination, I usually insist that before the trial that same doctor, and I should say, that doctor together with another doctor, because we like to have two medical men do this, have the prisoner examined at least three times before the trial, which would include one psychiatric examination on the very morning that the man is to be tried, so that we have, as far as we can go, an up-to-the-minute mental report as to the fitness or otherwise of that individual to stand his trial.

Hon. Mr. ASELTINE: Does that take place before the preliminary hearing?

The WITNESS: That may or may not. In some cases the examination does take place before the preliminary hearing, but since the question of insanity does not arise on the preliminary hearing at all, it really does not matter when those examinations take place as long as they do take place before the actual trial.

I might say this, in case there is any apprehension in the minds of some of the members that the report of the psychiatrist might contain some admissions of the accused, that this is not the case. Our psychiatrists in Ontario have been extremely careful in their reports to me, which in turn go to the local Crown attorney, to refrain completely from any discussion of the facts of the case with the accused, so that when I read a psychiatrist's report there is nothing factual in that report regarding the crime, but it deals completely and exclusively with the results of that examination, and there is no resulting prejudice to the accused from any admissions he might make to the psychiatrist during the examination. Copies of these reports are forwarded or supplied to the defence counsel if he is then available. We do not hesitate one minute at all in supplying defence counsel with a copy of the psychiatrist's report.

Mr. FAIREY: May questions be asked, Mr. Chairman.

The PRESIDING CHAIRMAN: We would prefer, Mr. Fairey, if you would wait until the witness has completed his presentation, and then you will have ample opportunity to sumbit questions. Shall the committee proceed?

The WITNESS: That report of the psychiatrist, whether it is positive or negative, is of course kept and supplied to the local Crown attorney, or any particular Crown counsel who might be appointed to conduct the prosecution, and then the usual police investigation proceeds. Briefs are prepared by the police officer in charge of the investigation and copies of these are supplied to the Crown counsel.

Now, in cases where it is decided to make a scientific examination of instruments such as knives, bludgeons, blood stains on clothing, seminal stains on fabrics, ballistics and so on, our crime detection laboratory in Ontario, with the very great assistance of the R.C.M.P. laboratory here, proceed with those scientific investigations. I might say that in the field of ballistics we rely entirely on the R.C.M.P. crime detection laboratory here, as we do also in cases of forgery where the question of handwriting or documents comes into existence. We have, Mr. Minister, the utmost co-operation, which is very greatly appreciated, from your laboratory. We do not rely on any ballistics except the ballistics experts supplied by the R.C.M.P. or on the question of forgery. If alcohol tests, blood tests and so on, are involved those reports also, in the vast majority of cases, are supplied to the defence counsel if he requests them.

The usual pattern is that to a great extent the case is fully prepared by the time the preliminary hearings comes around. We have no set rule on the date of preliminary hearing. It is usually governed by the extent of the progress of the police investigation. If it is sufficient to warrant the holding of a preliminary hearing, we do so, and that date is also governed by the date of the assizes which are to be held, because we do not want a prisoner or a person charged with a crime languishing in custody too long before he knows whether or not he is going to be committed for trial. Therefore the date of the preliminary hearing is governed somewhat by the date of the assizes which are fixed by the Chief Justice of the Trial Division at the beginning of each calendar year.

The assizes, I might say for the information of the members, with the exception of the larger centres such as Toronto, Hamilton, Ottawa, London and Windsor, there are two assizes a year. We have three assizes in the other larger centres to ensure that a man is not going to be in custody for an unreasonable length of time without his coming to trial.

At the preliminary hearing—as those members of the bar who are members of the committee will of course appreciate—the Crown evidence is only heard and if a *prima facie* case has been established by the Crown, there is a committal for trial.

At this stage possibly the question of bailing an accused charged with murder might be commented on very shortly. It is not unknown that parties charged with murder have been bailed. It is very very rare, of course, and only in those cases where the evidence is of such a flimsy character, and the outcome is in extreme doubt, that bail is granted. But, there have been cases. I think I can recall three cases only. One case as the minister knows was in the province of Manitoba, and we had one in Ontario and one in British Columbia. These were cases where bail was actually granted, but in the vast majority of cases, of course, bail is refused in a murder case. I would not say in a capital case, because at the moment rape is in the category of a capital case.

After the accused has been committed for trial there is in our province of Ontario a grand jury. We are one of those backward provinces that have not as yet disposed of the grand jury. I shall deal very briefly with that. An indictment is prepared—an indictment following the English form—and the grand jury consisting of ten members is convened by the sheriff and the indictment is consented to by the trial judge, and again, before that body, only the Crown witnesses are heard. It is almost repetition of the procedure of the preliminary enquiry; that is in the province of Ontario. The grand jury has the privilege or jurisdiction to return a no bill if it feels that the Crown has not brought forward sufficient evidence to warrant the accused man facing a petit jury. But, it is very rare—I cannot recall a case, certainly

in our province—where a grand jury has returned a no bill in a murder case, with this qualification, that it sometimes happens that the grand jury might return a bill of indictment for manslaughter rather than for murder. I might say that grand juries in that respect are somewhat of a convenience. Their proceedings are secret, and quite rightly, because in their opinion they consider what is the proper charge which this accused should face.

The grand juries sit at the same sittings of assizes as the petit jury so that there is no delay if the grand jury has returned a true bill in the province of Ontario because the accused is then to be tried at that sitting of the assizes, and in the smaller centres the trial takes place almost immediately. It not infrequently happens that commencement of the trial takes place on the same day as the grand jury returns the true bill.

There is nothing unusual in respect to the trial of an accused person tried with murder. The members of the bar who are members of this committee will, of course, know that every safeguard is given to the accused by our Criminal Code to ensure a fair trial. I might mention this in passing that an accused person has the right to challenge any juror for cause. He has twenty peremptory challenges in a capital case which indicates the safeguards which are thrown around an accused person giving him every opportunity to have what he considers a proper jury to try the issue with which he is charged.

If there is any question at this stage regarding the mental capacity of the accused man, an issue is tried, either by the judge impanelled to try him, or a special jury, as to his fitness to stand trial and instruct counsel. As I say, if there is any suggestion of it at all in the psychiatrist's report—these are, of course, Crown psychiatrists, and I am going to deal with the question of psychiatrists for the defence of indigent prisoners, later, with your permission Mr. Chairman.

The PRESIDING CHAIRMAN: Of course.

The WITNESS: If there is the slightest suggestion that this man is mentally ill, or any doubt about it, an issue is tried and the psychiatrist's evidence is put in a very impartial way by Crown counsel and answered by defence counsel through witnesses, and that jury may then try that issue as to his fitness to stand trial at that time. If he is found to be unfit to stand trial or to instruct counsel he is remanded to a place of safekeeping by the trial judge awaiting the pleasure of the Lieutenant Governor of the province, which is the Ontario hospital at Penetang used for the housing of the criminally insane. Then the trial proceeds. There is nothing particularly unusual regarding the procedure of a trial on a capital offence. If the accused is convicted he is immediately sentenced, on motion by Crown counsel, to the death penalty by the presiding judge. For the lay members of the committee, it is useful for me to remind you that a capital case can only be tried by a jury—except in the territories. In the provinces it can only be tried by a jury, and cannot be tried by a judge without a jury.

Now, after the sentence of death has been pronounced by the trial judge, the date is sufficiently fixed in the future to ensure that an adequate time interval will lapse to ensure that the accused may appeal to the provincial court of appeal, and in our province he has 30 days in which to do so—and incidentally by the Code the time for appeal cannot be extended. If the time for appeal goes by because of some mistake of the accused himself or his counsel, by the express provisions of the Criminal Code that time cannot be extended. I must confess that I do not know what the new Code says on that. I do not know whether that has been taken up or not. It is very rigid in that respect. If the time goes by for appeal, there is nothing that can be done by any judge in extending the time, or by any one; we are all powerless to assist.

Mr. FULTON: Perhaps I should wait until afterwards, but in British Columbia in a recent case, the court of appeal, notwithstanding the provisions of the Code, extended the time for appeal and allowed an appeal to be heard.

The WITNESS: That is the first case I ever heard of it being done.

That is the situation, and I do not propose that anyone would object to it very much.

The PRESIDING CHAIRMAN: Will you please defer your questions to the end of the presentation. It will save time.

The WITNESS: Then, usually the trial judge is particularly cautious in this regard, because there is not only an appeal of right to the provincial court of appeal, but there is an appeal under certain circumstances to the Supreme Court of Canada. That is, if there is a dissenting judgment in the provincial court of appeal he may come to the Supreme Court of Canada as of right. If there is an unanimous judgment dismissing his appeal in the provincial court of appeal, he may apply for leave to appeal to the Supreme Court of Canada on a point of law. So, the trial judge is alert to the fact that ample time must be given between the time of the passing of the sentence and the date of the actual execution to ensure that the condemned man has a sufficient opportunity from a time point of view, to see that his case, or cause, may be reviewed by the appropriate appellate courts.

The Criminal Code provides that immediately upon conviction of a person on a charge of murder, the trial judge must report to the Minister of Justice his views on the case. When I say "his views" I must confess that I have never seen one of those reports; but I understand it is a factual report on the case in which the judge expresses his views on the evidence, on the witnesses and so on. I would prefer if someone else would say what was contained in such a report because I have never seen one. In any event, it is not a matter affecting the prosecution level.

Now, sometimes there is no appeal. I shall deal with appeals very shortly. Suppose the accused does not appeal. I might say that it not infrequently happens that an accused person does not appeal. We had a case quite recently in Stratford where the accused did not appeal his sentence, and he relied, I presume, upon an application for executive clemency or commutation. Invariably they do appeal. But in those cases where they do not, the matter proceeds in the ordinary course.

Again, if we have any suggestion during the interval between the date of sentence and the date of execution that there is any mental condition exhibiting itself, we immediately require another mental examination. Your department, Mr. Minister, does the same thing, of course. We work very closely together in that respect. The mental examinations are carried out and then, depending upon the results, the question of commutation from the federal level comes into the picture.

I shall skip the question of appeals for a moment, but I want to deal with them although not at any great length. Let me first deal with the question of execution. The execution of a condemned person is a matter solely within the provincial jurisdiction. The official in charge of arrangements is the sheriff of the county or district in which the accused is awaiting the carrying out of the death sentence.

In the Province of Ontario we have no central place of execution. Executions take place within the walls of the jail, of the county in which the crime was committed and the accused was tried.

If the sheriff cannot get any professional executioner, he must of course carry out the execution himself. But there have been in the past few years professional executioners who are engaged to carry out the grim task of the final step in the matter.

An inquest must then be held, but before I get to that let me say that the sheriff is the individual or official who has charge and has the say as to who shall be present at the execution. Attendance is usually confined to the spiritual adviser of the condemned man, sufficient guards or police officials to ensure that order is carried out, a medical doctor, and other necessary personnel to see to the carrying out of the execution efficiently. However, the sheriff is the sole arbiter as to who shall be present.

After the sentence has been carried out, an inquest is held, usually by a jury of six, with the coroner being present. The usual verdict is that "AB came to his death as a result of the carrying out of the sentence of the court," and that is the official verdict of the jury.

If the deceased was one who had no kith, relatives, or next of kin, the body is buried within the walls of the prison where the execution took place. But if relatives desire to claim the body, representations or applications for that purpose must be made to the provincial authorities, and the Lieutenant Governor in Council may then order that the body be delivered to the relatives of the deceased.

Now, with respect to the question of appeal, I shall deal very briefly with the appeal where the accused has retained counsel and counsel has filed a notice of appeal. That does not present much difficulty from the point of view of the courts or from the point of view of the prosecution. The notice of appeal must be filed within 30 days. In the province of Ontario the appeal is heard by a full court consisting of five appeal judges. The evidence taken at the trial, of course, is transcribed with a copy provided for each judge, and there is an appeal book which contains the appropriate grounds of appeal together with a memorandum of the points of law to be argued.

The appeal is then heard and the result is announced. Reasons for judgment may or may not be given. The appeal is either allowed or dismissed and the conviction set aside or confirmed.

As I said before, if there has been a disagreement in the judgment in the court of appeal the accused, as a rule has the right to appeal to the Supreme Court of Canada on a point of law only. And if the judgment of the Court of Appeal in Ontario is unanimous, he has the right to apply for leave to appeal on the ground of a point of law only.

If it does come to the Supreme Court of Canada, the matter is dealt with by the full court in Ottawa and either the appeal is allowed and a new trial is granted, or the appeal is dismissed and the conviction is confirmed.

There is provision in the Criminal Code to allow a judge of first instance, which would be a Supreme Court judge—having regard to the time factor in these matters, because in this matter of appeal it takes a long time, unfortunately, although no time actually is lost—the power is given to reprieve a person. That simply means postponing the date of his execution from the date which was pronounced by the trial judge, in order to insure that the appeal could be properly heard by an appeal court, or by the Supreme Court of Canada if there is an appeal to that court. It is not desirable, I might say, nor is it in the best interests of proper administration of criminal justice to reprieve a person unless it is absolutely necessary because to do so is like taking him up one step of the gallows and then bringing him back again, and I do not think it is proper in all circumstances.

There have been cases unfortunately in which there has been a succession of reprieves which have had to be applied for. But it is not fair. Neither is it humane to the accused, nor is it in the best interests of the proper administration of criminal justice.

Now as to the question of Legal Aid for indigent persons in capital cases, I might say that is a very important aspect in the administration of justice. In most of the provinces of Canada systems of free legal aid have been inaugu-

rated and established by various law societies in the various provinces. I cannot speak for the other provinces. I have a working knowledge of the systems in force, but I can speak, of course, only for the province of Ontario. In the province of Ontario we have a well organized legal aid system, whereby any person charged with any crime—this extends also, incidentally, to civil matters—may apply for free legal aid. I will not bother the committee with the conditions under which free legal aid may be applied for, but they are fairly elastic. I will confine my observations here to the defence of capital cases.

Prior to the inauguration of free legal aid in the province of Ontario, the Attorney General's Department would pay an indigent person's counsel at the rate of $40 a day. That was later increased to $50 and I think, latterly, to $60, before the inauguration of free legal aid. We would pay that to counsel of his own choice. With reference to that, public funds could not be expended for preparation, for lawyers have a habit of extending preparation to a rather unreasonable extent sometimes, and we confined the expenditure of public funds to a reasonable per diem rate in those cases. However, since the inauguration of free legal aid in Ontario that system has been discontinued, because in all the counties panels have been established, and I might say that these panels are not confined to inexperienced and junior members of the bar, because we find in a great number of cases that the leaders of the bar have come forward and offered their services free for the defence of indigent prisoners charged with murder.

Now, if the person who avails himself of free legal aid is convicted, and he desires to appeal, the question then arises as to the expenses involved in an appeal. In Ontario, if that situation exists, an application is made for the payment from public funds for the transcript of the evidence and any incidental expenses that might be involved. I ask for an affidavit or statutory declaration from the prisoner himself to certify or testify to his indigency, together with a retainer to his counsel, and upon receipt of that, when I am satisfied that he is indigent and that he cannot pay for the evidence, I then recommend to my own minister that public funds be paid to transcribe the evidence for use on appeal. It is curious that in a vast number of cases of this sort, we find that persons convicted of murder are in that unfortunate indigent class, and the demand on our department for the payment for evidence in these cases is almost, you might say, 100 per cent. The Crown, therefore, pays for the transcript of the evidence and the assistance of the Crown is available at all times to defence counsel in preparing the appeal. We even prepare the appeal books, assist defence counsel in preparing the law, and do all this gratuitously. There is no obligation on the Crown to do it, but we do it to ensure that every safeguard is given to an accused person to see that his cause receives the attention that it should receive by the appropriate tribunal.

If, nothwithstanding that assistance by the Crown, the court of appeal affirms the conviction and the accused or condemned man feels—or his counsel feels—that there is a sufficient point of law involved warranting an appeal, or an application for leave to appeal to the Supreme Court of Canada, again we expend public funds in seeing that counsel's expenses are paid to Ottawa—for the purposes of the application. I might say that there is no counsel's fee provided for this, just expenses. If leave is granted, we again then lend every assistance to see that the appeal is perfected here, and then out-of-pocket expenses for counsel are paid for his sojourn here in arguing the case before the Supreme Court of Canada.

Now, I cannot overemphasize the work that the Crown has done in these cases where there have been indigent persons convicted of murder. Before the inauguration of free legal aid in the province of Ontario, vast sums of public funds were expended over a period of years to ensure not only that a person

charged with murder was represented by counsel of his own choice, but that every other aspect of his trial would be attended to. For instance, it quite frequently happens that an accused will come through his counsel to the Attorney General's Department and say, "I have a witness in British Columbia, and it is most important that this man be here or I cannot prepare my defence; I cannot answer this charge unless that witness is here." There is only one thing to do, if a man cannot afford to bring a witness from British Columbia, we authorize the expenditure to have that man brought to Ontario, and we put that witness on the Crown witness sheet to ensure that that man will have a proper defence. Incidentally, one of my conferences today is on precisely the same thing, a free legal aid case a murder in Port Arthur in connection with which we are trying to get evidence in Finland as to the mental condition of this man, and we are experiencing some procedural difficulties, but I am in the rather anomalous position as prosecution counsel of trying to arrange for evidence for the accused man. I merely mention that to show that it is really an obligation on the part of the Crown to do these things and spend public moneys to ensure that the man has a proper trial and that the due administration of criminal justice is carried out.

I might say for those members of the committee who are unfamiliar with the procedure at a trial—and I am not going into technical matters, it will suffice to say this: that in all of the cases, not only in capital cases but usually in all criminal cases, there is complete disclosure by the prosecution of its case to the defence. To use a colloquialism, there are no "fast ones" pulled by the Crown. The defence does not have to disclose its case to the Crown. We do not ask it for a complete and full disclosure of the case. If there are statements by witnesses, statements of accused, the witness is supplied with copies. They know exactly what our case is, and there is nothing hidden or kept back or suppressed so that the accused person is taken by surprise at a trial by springing a surprise witness on him. In other words, I again emphasize the fact that every safeguard is provided by the Crown to ensure that an accused person, not only in capital cases but in every case, receives and is assured of a fair and legal trial.

Now, there is this question of the psychiatrist for the defence, which presents a somewhat difficult problem. As I said before, the Crown does bring its own psychiatrist in to examine the accused person. Sometimes however, we meet the request that we should permit a psychiatrist of the choice of the accused to examine the accused. We have no objection to any defence psychiatrist examining the accused person, but it is felt that if possible that should, of course, be done at the expense of the accused; but in most cases where there is no money to pay for psychiatrists—and one cannot expect psychiatrists to travel many hundreds of miles at their own expense in these matters—some provision should be made for payment of their reasonable fees and their out-of-pocket expenses. I am happy to say that as far as Ontario is concerned, the Law Society, through its legal aid plan will, in certain circumstances—and I should not qualify that, I should say in all circumstances—pays for the psychiatrist of the accused's own choice. I might say that usually they are top-notch men and since legal aid has been in force in Ontario, first class psychiatrists have been retained by the defence. These men have been very helpful and their co-operation has been really inspiring. Their fees and expenses have been paid out of legal aid funds of the law society. I merely mention that because there has to be some restraint in these matters. If a free hand was given to the defence, they might line up 20 psychiatrists which probably under the circumstances would hardly be justified, so that we feel, and this has nothing to do with the Crown, but is a decision of the law society, that within reason law society funds will be paid out on proper application for defence psychiatrists.

I think I can state with assurance here that a person charged with murder who is indigent is put to no expense whatever. Of course, that is almost an anomalous statement, but in other words he does not have to have his friends dig up any money whatever for him if he is truly indigent. His counsel is supplied, and even the evidence taken at the preliminary inquiry is supplied out of public funds. Every assistance is given to that man to ensure a fair and proper trial, and in my experience, extending over some 27 years, I have not yet heard any complaint from the defence that there has been any lack of co-operation on the part of the prosecuting authorities in the matters which I have just related. I think I have covered the subject, Mr. Chairman, as fully as I can. If there are any questions I would be glad to answer them.

The PRESIDING CHAIRMAN: Probably you would like to say a word now about corporal punishment and lotteries. Would you care to do so?

The WITNESS: Mr. Chairman, I would prefer to do that at a later date if I could. I came prepared to speak on capital punishment today, and I would like an opportunity to collate my ideas, if that is satisfactory to you.

The PRESIDING CHAIRMAN: Would you be available on a subsequent occasion to come back before the committee?

The WITNESS: Yes I would, sir.

The PRESIDING CHAIRMAN: We would appreciate that very much. We thank you very much, Mr. Common, for your presentation.

Could I suggest, ladies and gentlemen, that you first address the chair in presenting your questions? We are anxious to adhere to procedure here. In order that the notes might be kept in order as taken by the reporter, I would appreciate if you would address the chair first, and then, when recognized, your question will be recorded by the reporter. This will permit you to have your question put on the record, and secondly, the reporter will be able to determine who is presenting the question. Mr. Dupuis has asked a question.

Mr. SHAW: Mr. Fairey had one question.

The CHAIRMAN: I recognized Mr. Dupuis. I did not see Mr. Fairey.

By Mr. Dupuis:

Q. After a psychiatrist has declared an accused person not fit for trial, would you then proceed with a preliminary hearing at that time, or would the preliminary hearing be delayed?—A. What happens is this: if that condition does exist, and a psychiatrist or psychiatrists find that man is what we call "certifiable", mentally ill and unfit to stand trial, under the provisions of the Code he can be remanded by the magistrate for observation for a certain period of time. Immediately following his being remanded by the magistrate we would put him immediately in an Ontario hospital prior to any preliminary hearing, and there would be no further proceedings until he recovered. Does that answer your question?

Mr. DUPUIS: Yes.

The PRESIDING CHAIRMAN: Mr. Fairey?

By Mr. Fairey:

Q. I was going to ask Mr. Common a question when he was talking about the examination made by the psychiatrist. If the accused were to make an admission to the psychiatrist, did I understand you to say that the psychiatrist would not include that admission in his report then or at any time? —A. That is true, with this qualification: I have seen some psychiatrists who

have been called in, who are probably a little inexperienced in such matters, who have included in their report something in the way of an admission. That psychiatrist has been requested to amend his report by deleting the admission.

The PRESIDING CHAIRMAN: Mr. Winch?

Mr. WINCH: I have three short questions. Shall I ask them all at once and then they will be out of the way? They are all very short.

The PRESIDING CHAIRMAN: All right, as long as no person has a monopoly, we are quite willing.

Mr. WINCH: The first question is: must a coroner view a body before it is removed from the place in which it was found? And the second question is: when a grand jury hands down a decision—

The CHAIRMAN: Would you like to put your questions one at a time, Mr. Winch?

The WITNESS: In 99 cases out of 100 there is a body and the coroner does view the body and gives his warrant of release of the body for burial.

By Mr. Winch:

Q. I mean before the body is moved from where it is found, does the coroner have to view it there first?—A. The coroner does not have to necessarily view it there first. In a great many cases some by-standers might move the body, or the police might do it for investigation purposes, but it is not absolutely necessary that the body be not moved before the coroner views it.

Q. And the second question, Mr. Chairman, is: when the grand jury bring down a "no bill" or a change in the charge, is that automatically accepted and carried through?—A. Oh yes, definitely. Once the grand jury—with this exception—yes, I can say, for general purposes, once the grand jury has returned a "no bill" in the matter, we accept their decision or their substituted bill of manslaughter.

Q. The third and last question is: can the Crown introduce as evidence at any time of the proceedings a confession in the case where the accused pleads not guilty?—A. Do I understand your question to be: if an accused pleads not guilty on his arraignment, can the Crown produce as evidence a statement given by an accused?

Q. Yes.—A. Yes, very definitely, and it is then for the trial judge to determine whether that statement is of a voluntary character warranting its admission as evidence.

Q. Thank you.

By Mr. Boisvert:

Q. Mr. Common, where do the legal aid in Ontario get their funds to defend an accused person?—A. The province has made an annual grant to the law society for legal aid purposes. That fund is supplemented to some extent from the civil side where costs have been recovered in legal aid cases where the legal aid lawyer has been successful in establishing claims and received costs. Those costs are put in the legal aid fund and it is built up that way.

Q. With respect to blood tests and alcoholic tests, are they taken immediately after the arrest of the suspect?—A. Yes. They are taken right away. It varies, of course, in different cases. That also applies to the deceased. Quite frequently the blood is taken from the deceased.

Q. When they are taken, not from the deceased, are they taken with the consent of the suspected person?—A. In most cases they are. I have never known in a capital case where there has been any objection registered by an

accused person. There have been in drunk driving cases, numerable ones, but in a capital case I have never known of an objection being brought out in court to it.

Mr. BOISVERT: Thank you.

By Mr. Mitchell:

Q. Mr. Chairman, just to keep the record even, is an accused person brought up for remand before the magistrate between the time of arrest and the time of the preliminary hearing?—A. Theoretically there is no limitation. They can be brought up and brought up. From the practical point of view, the way the Code stands now, you can consent to adjourn beyond the usual eight days which was in effect before. That brings no difficulty. A Crown counsel and defence counsel get together and say we will be ready to go on at "X" date, and adjourn the preliminary hearing to that date. I have never known a case—and I think I can give assurance to the committee that there will never be a series of remands, to the prejudice of the accused because an alert defence counsel would not stand for it and we would not permit it.

Q. It is possible for the defence to give evidence at the preliminary hearing? —A. Very definitely. There is a statutory warning which the magistrate must give to the accused at the conclusion of the evidence presented by the Crown which warns him that he has the right to give evidence, but that anything he says might be used against him at the trial. He also has the right to call evidence and in a great many cases that privilege is taken advantage of.

Q. Would you care to comment from your experience on the practice in Ontario of having executions in the county jails as against the practice in other provinces of setting up a central place of execution?—A. I have my own views, but I would ask that I be excused from answering that question because we have a select committee of our own legislature which is preparing a report which has not yet been delivered.

By Mrs. Shipley:

Q. I would like to ask Mr. Common a little bit about how you determine an indigent for this purpose. I am concerned about the man who might have a little bit of money but perhaps not enough to defend himself as well as an indigent under your arrangement.—A. Under our plan—I am sorry I do not have the rules here—the legal aid is administered by the Law Society of Upper Canada which is entirely separate from the government, of course, as you know, and it puts the minimum at $900. If the man is earning more than $900 he is not available for legal aid, but if he is under $900 he is qualified for legal aid.

Q. Earning! Would it not depend on what we might have, because he could not be earning at the time of his trial?—A. That is an arbitrary figure which is established. We have to establish something in the nature of a minimum character. I think I can safely say that is not rigidly adhered to. I do know of cases where a person with property and there being no income from that property sought legal aid and qualified for it. The rules are very elastic, because the whole system of legal aid would be defeated if you adhered rigidly to a policy of that kind. I might say that this rule of setting a minimum has not interfered with legal air, having regard to the elastic way they are treated personally.

By Mr. Shaw:

Q. Mr. Chairman, I have two questions. In reference to the 30 day period allowed for an appeal from a conviction and sentence you emphasized that that was extremely rigid. Do you know of any exceptions that have been made to this?—A. I am not quite clear as to what you mean.

Q. The 30 day period which is allowed for the filing of an appeal. Do you know of any exceptions that have been made to that?—A. May I answer your question first this way. Under the Code the time for appeal in the various provinces is set by the local rules of court of each province. It might be in some provinces 15 days, and in Ontario it is 30 days. The Code does prohibit the extension of time in capital cases. If I might just refer to the section, it is section 1018 subsection (2) of the existing Code:

> Except in the case of a conviction involving sentence of death,—

that is in a capital case—

> the time, within which notice of appeal or notice of an application for leave to appeal, may be given, may be extended at any time by the court of appeal or by any judge of that court.

Now, by statute in a charge of theft, for instance, a judge of the court of appeal may extend the time, but it says by statute "except in the case of a conviction involving sentence of death". I think that the reason for that was given that there has to be some finality in these matters. You might have an application made on the eve of an execution to extend the time, and I think Parliament at the time that section was drafted felt that there should be rigid finality in matters involving a sentence of death because one has experienced this sort of thing that right on the eve of the execution there is an application for a reprieve made on the ground of discovery of new evidence and things of that sort. But, if the 30 days has gone by, by statute it cannot be extended.

Q. My second question was this: in reference to bail being granted in a capital case, Mr. Common, stressed the fact that it is unusual and he said "only where the Crown's evidence", and he used the words "appeared to be flimsy". Is it customary for the Crown to reveal its hand prior to the actual case being heard, by granting bail. Would that not be admitting the flimsiness of your case?—A. Yes, but sometimes that cannot be avoided. I have in mind one case in Toronto where bail was granted. It was after preliminary hearing and the Crown's case was flimsy. I understand it, it was a very, very weak case.

Counsel moved for habeas corpus and bail was granted during the hearing of the motion on the return of the writ of habeas corpus in that case.

But when it came up, the prisoner was discharged on the ground that there was no evidence justifying the issue of a warrant of committal for trial, and he was discharged.

And to explain that one step further, I do not know of any other case, no matter how flimsy the case has been. I think I know what is in your mind. We do not necessarily disclose the nature of the Crown's evidence before the preliminary inquiry. Thus there is no way of determining the flimsiness of our evidence, and it can only come into court upon the preliminary inquiry.

Q. I was thinking of a British Columbia case where, just prior to Christmas, they let a woman accused out on bail.

Mr. WINCH: It was done for some other considerations, was it not?

Hon. Mrs. HODGES: How could it be?

Mr. WINCH: It is not always done.

The WITNESS: With a great number of cases it must not be overlooked that it is a matter of some difficulty. Certain facts are placed before Crown officials, facts which have all the aspects of murder. We have to say to ourselves: We are fully convinced that no jury will convict on this evidence, but we are not the persons to judge that. It must be left to a jury. And that is why I used the word "flimsy" qua murder.

For instance, there might be the element of intoxication or a question of extreme provocation or something of that nature. And when you have a lot of experience in these matters you will find there is a pattern followed by juries that where you have extreme provocation for instance the jury will reduce murder to manslaughter. But that is a matter for a petit jury to determine not for you or me. Perhaps some judge might grant bail in a case of that kind.

The PRESIDING CHAIRMAN: Now, Senator McDonald.

By Hon. Mr. McDonald:

Q. I was going to ask a question about executions but I find that it has already been asked. However, I wonder if the witness would care to express his view on whether or not he would favour any change in the manner of execution?—A. I would like to be excused from answering that question, if I may, Mr. Chairman.

Q. I noticed that Mr. Common indicated that the coroner performs double duties in the Province of Ontario. That is, he acts without a jury. Is that correct?—A. No. I probably did not make myself quite clear. When the coroner is called to the place where a body is found, he is merely notified by the investigators, the police officers, and he goes there to see what the sourrounding circumstances are. He may feel that there has been no foul play and the police are also satisfied, but he has already received instruction that he must not hold an inquest if we have elected to charge somebody. For instance, we have had to stop an inquest where the coroner had gone ahead. It was perfectly obvious that someone would be charged. Nevertheless the coroner overlooked his instructions and was about to hold an inquest when we requested him not to do so. It is almost elementary. It can be very prejudicial to an accused person to hold an inquest. The rules of evidence are elastic and the type of evidence which can be brought before an inquest may not always be proper evidence to be given in court. Nevertheless such evidence if presented at an inquest thereby becomes public. It may adversely affect the accused person at his trial if an inquest is held. Where the man is actually charged, or where you know he will be charged, it is not fair to him.

Hon. Mr. GARSON: On the basis of evidence which would not be admissible in court.

The WITNESS: Yes, on the basis of evidence which would not be admissible in a court of law.

By Hon. M. McDonald:

Q. A coroner and jury could clear up a number of cases expeditiously where there was an accident unless something else came up which might lead you to think that there should not be an inquest.—A. My remarks should not be taken to convey the impression that in all cases of homicide there has been no inquest. But where we feel that the circumstances are going to lead to a prosecution, let us say, or a murder charge being laid, it is in that type of case where the coroner has instructions not to proceed with an inquest.

Q. I was wondering if I might ask Mr. Common if he would care to express an opinion as to whether or not there should be a change in the Act to indicate different degrees of murder? We have pre-meditated murder or wholly unjustified murder; then we have murder under provocation and so on.—A. Again, Senator McDonald, in view of the fact that the bill is now before the House, I frankly would not care to express an opinion.

Q. Very well. Thank you.

The PRESIDING CHAIRMAN: Now, Senator Fergusson.

By Hon. Mrs. Fergusson:

Q. My first question had to do with the place of execution but I find that it has already been answered. The reason I wanted to bring it up was because in New Brunswick some of the women's organizations have felt strongly that having executions take place within the walls of small prisons or jails is really barbarous. But I understand now that the question has been answered. And my other question is merely by way of clarification. When Mr. Common answered the question about legal aid he said money had been supplied by the provincial governments. They may have done so in his province, but it is not a general thing, is it?—A. No, it is not. I was only speaking of the province of Ontario. I do not know what the situation is with respect to the other provinces. But in Ontario there are grants kept up to a certain level by the government. I think the grant is made two or three times a year.

Q. In some provinces the money is provided almost entirely by the bar itself, is it not?—A. Oh yes. But I do not want to give the impression that the money is used to pay counsel. In Ontario, in any event, counsel give their services freely, and the money is used simply to pay out-of-pocket disbursements. Under legal aid no lawyer gets any fee at all. That is the basis of legal aid.

The PRESIDING CHAIRMAN: Now, Mr. Fulton.

By Mr. Fulton:

Q. I would like to ask Mr. Common whether on the basis of his experience as director of public prosecutions, if he would care to comment with respect to a recommendation for a change in the Criminal Code. I base my question on the case of Rex versus Cunningham, a British Columbia case, in which a person was charged with murder and he came up before the trial judge and pleaded guilty. The trial judge warned him, of course, of the nature and consequences of that plea and directed that the accused man be examined by a psychiatrist immediately, and adjourned the proceedings pending the examination. After the examination was finished, the psychiatrist reported that the accused was mentally fit to understand his plea to the charge and to realize what the consequences would be.

Then His Lordship stated that he would hear Crown evidence in corroboration though he cited a case where the judicial confession of guilt had been sufficient to sustain a conviction. After corroborating evidence was heard regarding the Crown's case, the trial judge again adjourned the case.—A. You say there was some Crown evidence heard?

Q. Yes, although His Lordship said that he did not think it was absolutely necessary. He then adjourned the court and asked the doctors to see the accused man again. Upon resumption of the proceedings, Dr. Campbell took the stand and reiterated his previous opinion, and he was supported by the other doctor. Thereupon His Lordship found the accused guilty and passed sentence.

Now I was amazed, and I immediately looked up the Code, because I was firmly of the opinion that in the case of a capital charge a plea of guilty could not be accepted, but that it would be directed that a plea of not guilty be entered, but there is nothing in the Code to that effect, and this is a most experienced and humane judge, and he had to accept the plea of guilty and had no alternative but to pass sentence. Would you care to express an opinion that there should be inserted in the Code a provision that a plea of guilty will not be accepted in such cases?—A. I would think that an amendment of that nature would be desirable. We had the same situation in the Bliss case in Port Arthur some years ago. This was just a young fellow, and he was tried

before Mr. Justice Nichol Jeffrey. He was defended again by experienced counsel and insisted on pleading guilty. Justice Jeffrey—it is reported, I might say—gave all the required warnings and so on but, notwithstanding that, this man still persisted and insisted that his plea should be accepted, and it was put in and, as in your case, the judge passed a sentence of death and he was executed.

Q. So was this man.—A. I know that expressed Mr. Justice Jeffrey's views, as I discussed it with him later, that it was unfortunate, that a plea of not guilty should not have been provided for notwithstanding the persistence, and I think that, due to the terrible consequences of the plea and the finding of guilty—especially the plea—that might be considered. The opponents of that view will say, of course, "Who would better know that the accused himself whether he is guilty or not?"

Mr. WINCH: Under the Criminel Code that would be tantamount to suicide.

Mr. DUPUIS: That is what I suggest. I remember a case of a man who, after being brought into court, pleased guilty simply to get rid of the whole trouble altogether.

The WITNESS: It is a matter of procedure. You may find a man who pleads not guilty and then afterwards makes a damning statement, that then in fact it does not make much difference.

By Mr. Fulton:

Q. I am grateful for your expression of opinion that, notwithstanding that a man pleads guilty, if he is up on a charge on which, if found guilty, he will be sentenced to death, there should be a trial before that sentence is passed.—A. To express my own personal opinion, I thoroughly agree with you.

Q. Then I wanted to ask you a question in connection with the time for appeal. There was a recent case in British Columbia—I took the opportunity of interrupting you rather than waiting for the right time to question you, and I apologize for the interruption—in which I think I might say it was felt that certain aspects of the defence at the original trial had perhaps not been put before the jury as fully as they might have been. However, it was a case of an indigent person, and after he had been convicted he himself did not indicate a desire to appeal, but friends referred the matter to other counsel, and that counsel felt that there were certain things on which he should appeal. By the time this had happened the time within which notice of appeal must be given had gone by. However, they entered notice of appeal and it came before the appeal court, and I think I am right in saying that without giving reasons their lorships said, virtually, "By virtue of the inherent jurisdiction of the court, we are going to allow the appeal to be brought on, notwithstanding the statutory prohibition which you have mentioned". I think the time of appeal in our province is also 30 days. I would like to ask you whether you would think that perhaps the right of the court of appeal to extend the time for appeal should be covered by statute, or whether you think there is adequate protection now in the fact that courts of appeal will extend the time, notwithstanding the statutory prohibition. I might say that in that case there was a new trial ordered and the accused was found guilty of manslaughter; previously he had been convicted of murder.—A. Obviously it was satisfactory to everyone. My own opinion is that subsection 2 should be absolutely adhered to and should not be changed. I am fearful that if there is any interference there will be applications made that are entirely without merit, because we all know—those of us who

have anything to do with the administration of criminal law—that delays are always prejudicial to the proper administration of justice and are in favour of an accused person. I do not say this in any offensive or harsh manner, but delaying tactics do not result in the proper administration of justice, and they sometimes result to the great favour and assistance of guilty persons. If a judge could extend the time for appeal right on the eve of an execution, for instance, frankly I feel, personally, that that is very undesirable. It has a faint odor of abuse of the process of the courts sometimes.

THE PRESIDING CHAIRMAN: Senator Hodges.

Mr. FULTON: I have a few more questions to ask, but I may have an opportunity to ask them later.

Hon. Mrs. HODGES: I would like to ask a question. Mr. Common spoke about the accused being subjected to examination by a psychiatrist on behalf of the Crown and in some cases by a defence psychiatrist. I have noticed on more than one occasion, not necessarily in Canada, that the view of one psychiatrist absolutely negates the view of another. Supposing you get a situation of that kind, is there any resort to any other expert to decide the sanity of the accused?

The WITNESS: Under our existing law, the assessment of expert testimony is a matter for the jury. It is left solely to the jury to decide whom they feel they can believe, having regard to all the other circumstances.

Mr. LUSBY: Where do these professional hangmen you spoke of get their training?

The WITNESS: That is something I am sorry I cannot enlighten you on. I know nothing whatever about that.

Mr. LUSBY: They do not have any dress rehearsals?

Hon. Mrs. HODGES: Do they have any apprenticeships?

The WITNESS: I think that should come from another witness. Frankly, I do not now where they gain their experience.

The PRESIDING CHAIRMAN: Senator Farris?

Hon. Mr. FARRIS: Does not the fact of a death sentence tend to—

The PRESIDING CHAIRMAN: Please, gentlemen. We did not hear the last of your question.

Hon. Mr. FARRIS: I repeat the question. Does the fact of the death sentence tend to acquit an accused person?

The WITNESS: I would like to be excused from answering that question, if I may. At some stage we will have that matter for discussion on a Governmental level. I do not know what the attitude of my minister would be on this matter, and I would really like to be excused from answering that question.

Mr. WINCH: Anyway, you will be receiving a questionaire.

The WITNESS: There is a questionaire which has gone out, and I feel that should come out after my own minister determines what policy he will express on the matter.

Hon. Mr. MCDONALD: You mean a questionaire has gone out from your office?

The WITNESS: No.

The PRESIDING CHAIRMAN: It is on its way, shall we say.

Hon. Mr. GARSON: The practice is, is it not, that in the ordinary cases, not the capital cases but other offences, that it is the crown prosecutor who decides on the facts of the case what charges he will lay against the accused?

The WITNESS: Yes.

Hon. Mr. GARSON: And I take it from your remarks that in these capital cases even although the crown prosecutor might feel the facts do not warrant anything more than manslaughter, it would be for the jury to decide that question as to whether the charge will be that of murder?

The WITNESS: Yes.

Hon. Mr. GARSON: It would be left to the grand jury and the petit jury?

The WITNESS: Yes.

Hon. Mr. GARSON: And there is one other point: in these capital cases it is open to jury, is it not, to make a recommendation?

The WITNESS: Yes, definitely, and of course, it is also open to jury not only to acquit but to reduce the charge and find the accused guilty of manslaughter notwithstanding the fact that the indictment might have been murder.

Hon. Mr. GARSON: Or even criminal negligence?

The WITNESS: It is just manslaughter or acquittal. I am glad the minister raised that point. It is always open to a jury, as a matter of common law I take it, that a strong recommendation for mercy can be returned by a jury in returning its verdict of guilty in murder, and I take it that it is taken into consideration at the time and the appropriate place.

Mr. WINCH: That would have to be decided by the justice department, because the judge has to inflict the penalty of death if the accused is found guilty?

Hon. Mr. GARSON: Yes, but it is considered by the judge in his report, and he often expresses his opinion whether or not he concurs with the jury's recommendation for mercy. If he does concur in this recommendation, it often carries much weight.

The WITNESS: Yes.

The PRESIDING CHAIRMAN: Mr. Blair?

By Mr. Blair:

Q. With the permission of the committee, in your province does the final decision whether or not a charge of murder is laid rest on your doorstep as director of public prosecution?—A. For all practical purposes, yes. If there is any doubt in the mind of the local crown attorney, I would say "yes."

Q. This may be a leading question, in view of your answer to Senator Farris and Senator MacDonald, but would you like to comment on the problems which have been raised in this province with reference to what is called "constructive murder" and the responsibility of accomplices and accessories?—A. When you enter that field, you are covering a terrific territory, of course. Having regard to the very extensive case law on what is commonly called "constructive murder", that is where death ensues not as a result of an intention to kill, but some felonious act, the subject is such a broad one, and has so many implications, it is very difficult to answer that question in a categorical way, I am sorry, Mr. Blair. The bill is before the House, and I do not know what has taken place and whether the various degrees of murder were considered. We are getting on pretty well the way we are, with the way the law stands at the moment.

Q. Would it be fair to ask you whether you are reasonably satisfied with the present definition?—A. I am speaking for myself, but in the light of some experience in this matter, I am perfectly satisfied with the present state of the law, and I might say that I do not see any particular difficulty, or any difficult problems which have arisen as a result of the present state of the law.

Q. And one further question, sir. Would you think the administration of justice, and the due conviction of persons charged with the offence of murder, might be assisted if there were a discretion in the court to give a lesser sentence than capital punishment?—A. Again, I am expressing my own personal views, but I would not like to see that.

The CHAIRMAN: Mr. Dupuis?

Mr. DUPUIS: I would favour that in cases where there is only circumstancial proof. I do not mean cases where the murderer is caught in action, but in cases of circumstantial proof, I would favour a sentence of life imprisonment rather than the death penalty. I always have favoured that, and I am still in favour of that.

The WITNESS: I think that the best evidence of guilt have arisen out of entirely circumstantial evidence. I think the most glaring case is the Seguin case, where Mr. Seguin committed suicide minutes before he was to be hanged. I was in that case at the appellate stage. The circumstantial evidence could not have been stronger than direct evidence in that case.

Mr. WINCH: Could I ask a question supplementary to one of Mr. Blair's questions? It is strictly your own personal opinion that you would rather see the present situation where you have the reduction of a charge than have a choice of either hanging or life imprisonment?

The WITNESS: I would rather leave it to the jury to bring in manslaughter, if they felt there was an element of that in the case, rather than leave it in the discretion of the trial judge to have the verdict murder and leave a discretion to him to either impose a prison sentence or the death penalty.

The CHAIRMAN: Senator Aseltine?

Hon. Mr. ASELTINE: Doesn't the judge frequently direct that a verdict of manslaughter be brought in instead of murder?

The WITNESS: I would not say frequently, but if the indictment charge is murder what usually happens, from the practical point of view, is that the trial judge indicates that the Crown's case does not indicate murder, and then there is a directed verdict.

Hon. Mr. ASELTINE: That is the same thing?

The WITNESS: There is a directed verdict of manslaughter, providing the accused consents to that. It is rather a plea of guilty to manslaughter by the accused. There recently was a case, in fact just yesterday, in Cochrane—a murder charge—where the Crown's evidence went in, and then the Defence Counsel and the Crown got together. There was no question about it—it was really manslaughter. There was a plea of guilty to manslaughter and a directed verdict to the jury.

Mr. FULTON: Otherwise, the judge would have to cover it in his charge?

The WITNESS: Yes.

The PRESIDING CHAIRMAN: Did I understand you to say that most persons convicted of murder were in the indigent class?

The WITNESS: That has been my experience, Mr. Brown.

The PRESIDING CHAIRMAN: It would be your opinion then, that the instances of murder are very closely related to the economic condition of the individual and of society as a whole?

The WITNESS: It may be a coincidence, I do not know.

By Mr. Fulton:

Q. I would like to ask a question supplementary to one of the recent questions regarding the matter of an alternative sentence by the judge. Is it your experience that where there are elements mitigating in favour of the

accused, even although technically the charge of murder might be held to have been proven, that juries will not convict, but will find him guilty of manslaughter?—A. Yes, unquestionably.

Q. And you think that tendency on the part of juries is an adequate safe-guard under the present situation where there are mitigating circumstances in favour of the accused?—A. That is right. The human element is very prevelant in juries, in fairness to the accused and obeying the injunctions of the judge and so on, if they can find there is a possibility of a verdict of manslaughter, you will find that it is done.

Q. May I ask one more question? Would you tell us, under the strict interpretation of the Code, is the right of appeal to the court of appeal—I do not mean to the Supreme Court of Canada—is that a virtual statutory right or does there have to be an application for leave to appeal to the court of appeal which may or may not be granted?—A. Theoretically it is an application for leave to appeal, but in our province it is treated as an appeal as of right. Theoretically it is an application for leave, but our courts treat it as an appeal of right.

Q. In connection with your free legal aid in this province, now that that has been introduced, does the situation you outlined to us, where your department will recommend the voting of public money for expenses as distinguished from counsel fees still prevail or is it left to the legal aid?—A. Legal aid has supplanted that former system.

Q. I was thinking of expenses as distinguished from counsel fees.—A. At the actual trial if the accused says "I have a half dozen witnesses whom I want", the Crown counsel says: "Give me their names and we will put out public funds to bring those witnesses in and put them on the Crown witness sheet."

Defence counsel gets no counsel fee, but any expense he is put to at the trial is reimbursed. For instance, the evidence at the preliminary enquiry is paid for by us. We supply a copy. And his defence witnesses and things of that nature are paid from the local Crown attorney's own account. The out-of-pocket expenses at the trial are dispersed by local funds. Now, when it comes to psychiatrists or expert evidence, that is in a different category and we have got to supervise that very carefully. We cannot let them run wild on the question of getting every expert they might feel necessary. They would have to make application to the Provincial Director of the Legal Aid for permission.

Q. I think that the expenses of preparation, transcripts, and so on, and appeal books, are still paid by the Crown even though legal aid is in effect?—A. Yes.

Q. What about out-of-pocket expenses for counsel coming down for leave to appeal?—A. We pay that out of our own department.

Q. Notwithstanding legal aid?—A. Under legal aid in our province, it only extends to trial and not to appeal, except in very rare cases.

Q. Would you like to say whether or not the legal aid system is better from the point of view of the accused than the former system where the accused retained and paid his own counsel?—A. I think it is better. It is on a firm basis, whereas before it was rather nebulous and on a loose basis. The only one who can complain is counsel. Now he does not get a fee, whereas before he got a fee of $40 or $50.

By Mr. Winch:

Q. I find that some of the remarks have been somewhat pertinent and important. If we could have two or three minutes more I would appreciate if Mr. Common would enlarge on the statement he made based on his years' experience of criminal law on his view that he thinks it is preferable to have

the system as it is and have the jury have the right to diminish the sentence rather than the judge have any discretion as to the imposition of the penalty. Now, I completely agree with the powers of the jury, but if we have the situation where the judge thinks that as a result of the evidence that it is too severe to impose the death penalty, he has no discretion at all except of recommendation to the Department of Justire. Why do you say that in your experience you think that the judge should not have that discretionary power?—A. Again it is my own personal view, but my view is this: by allowing the judge to exercise discretion there he is usurping the functions of the jury because he says "notwithstanding what your verdict is, I am going to impose my views on this thing".

Q. Is not the Minister of Justice doing the same thing?—A. No. That is purely an executive action; it is not a judicial action which the Minister of Justice takes. It is an executive action. The theory is this: a jury has returned a verdict of murder on the proper direction of the trial judge on the proper assessment of the evidence. Now, that is the verdict of twelve men, that is their collective view and their individual view, because they have got to be unanimous. Now, if the trial judge says: "Notwithstanding that I am going to impose a jail term" he is really saying: "Notwithstanding the fact that you have returned a verdict of guilty of murder, I think he is only guilty of manslaughter and I will impose only a jail term." That, in my own personal opinion, strikes at the very root of our jury system.

The Hon. Mr. FARRIS: Would not the reverse be true if the jury reduced the sentence to a charge of manslaughter, then the judge might say "what are you doing? I think this man should be found guilty of murder."—A. It could go both ways. I think it would be violating policies which have stood the test of a great number of years.

Mr. BROWN (Brantford): Mr. Chairman, just following on this line which we have been discussing, have there not been cases where a judge has instructed a jury that they should render a verdict of murder or not, and then the jury goes ahead and renders a verdict of manslaughter?—A. Those are individual cases. It is quite true that has occasionally happened. That would be a perverse verdict where there has been no element of manslaughter in the case at all that a jury would bring in a verdict of manslaughter, and there is nothing you can do about it. It is a perverse verdict. It is a sympathetic and merciful view. That is all you can say about it.

The Hon. Mr. GARSON: Would not it be open to attack on appeal?

The WITNESS: It might be open to attack by the Crown on an appeal, but the difficulty is the judge has directed correctly, and notwithstanding that the jury have given a perverse verdict by returning a verdict of manslaughter. There is nothing that the Crown can do under those circumstances.

Mr. BLAIR: In your judgment, does this have any adverse effect in the sense of bringing the law into disrepute?

The WITNESS: No.

By Mr. Dupuis:

Q. I do not think it is the right time to bring in a suggestion of an amendment, but I want to go on record as saying that I intend to bring in an amendment to the Criminal Code giving the faculty to a judge in sentencing a man accused of murder and found guilty on circumstantial evidence only, of imposing life imprisonment or the death penalty. I say this because I do not wish to take the members of the committee by surprise and so that they may be ready to give their arguments against or for.

The PRESIDING CHAIRMAN: In the meantime we could avail ourselves of Mr. Common's opinion.

By Mr. Mitchell:

Q. There is one question arising out of the problem of legal aid. The figure of $900 has been mentioned. As I understand it a man who has a substantial income could well say "I have nothing". By substantial let us say $1500. The $900 is so ridiculously low.—A. It is low, and I think it is subject to increase. Do I understand your question to be: if a man is earning $1500 a year and cannot afford to engage a lawyer—what do you mean?

Q. The $1500, is that taken as a true test?—A. No, it is not.

Q. In other words any person in actual fact applying for legal aid, if he has any colour of right, will be given legal aid?—A. Oh yes. Cases of refusal of legal aid are not as a result of strict adherence to that $900 figure by any means.

Q. How many cases have been refused?—A. I am not in a position to say, but I think it is a very, very small number. I attended this clinic. I ran the clinic two or three times during the summer time in order to relieve the local director. We had an everage, each Monday night, of about 80 applicants for legal aid. These were not all criminal. There were a great many civil matters as well. And during the time I was there—and I went there once a week, every Monday night—not a single one of them was refused on monetary grounds.

The PRESIDING CHAIRMAN: What do you mean by "refused"?

The WITNESS: Let us suppose that a man had 8 or 10 children.

By Mr. Dupuis:

Q. If it were a criminal case, would you hold up the proceedings until you found out whether or not the fellow was able to provide legal advice for himself?—A. No.

Q. Would you carry on the proceedings without anybody defending the man in the meantime?—A. No. In a serious criminal case, such as a capital case, for instance, the accused would not be prejudiced or denied any relief on monetary grounds at all. I can say that with confidence.

By Mr. Winch:

Q. Suppose a man was indigent but had not declared himself to be indigent and had not asked for any legal aid?—A. He had not asked?

Q. Would you allow him to stand trial on a murder charge without supplying him legal aid?—A. No. I cannot recall any capital case where a man was unrepresented. It is true that he might be unrepresented at a preliminary inquiry. But when it came to his trial, I have never known of a case where the trial judge would not appoint some one to act as his counsel.

Q. You would not allow such a thing?—A. The trial judge would not allow it. He would nominate some member of the bar who happened to be in court to defend the man.

By Mr. Boisvert:

Q. Would Mr. Common permit me to ask another question with respect to legal aid?—A. Yes.

Q. Is it not a fact that in Ontario and some other provinces, legal aid has also been granted with respect to civil matters as well as criminal matters.—A. Yes, very, very much so.

Q. Is it a fact too that some part of the funds coming from a civil case in connection with costs might be used to pay an attorney acting against the Crown or against another party?—A. That is correct but the bulk of the

money which the law societies dispense on legal aid is their own funds, supplemented by grants from the provincial governments. Its also supplemented, as you say, by costs that might be recovered in some civil actions, but they are very small.

By Mr. Fulton:

Q. Just in case it should happen that we do not get representation from each province,—I realize that we can find out, if we wish and therefore I do not want to ask you to go into it in detail—but are you in a position to supply us with a list of those provinces wherein no legal aid systems are in effect?—A. I cannot do so at the moment but I will be very glad to send it to your chairman. I have that information. I may say that I am a bencher of the Ontario Law Society and I am a member of the Legal Aid Committee, and I can get that inforation very readily.

Q. I thought if you happened to have it here with you, you might give it to us at this time?—A. Unfortunately I have not got it here. Your question was to supply a list of those provinces which have systems of legal aid similar to ours?

Mr. DUPUIS: For criminal or civil or both?

Mr. FULTON: We are dealing with criminal cases now.

Mr. BOISVERT: I think there is a complete study of that question in the Canadian Bar Review.

The WITNESS: Yes. The Canadian Bar Review has a very fine article on it.

The PRESIDING CHAIRMAN: Gentlemen, it is now 6:00 o'clock. Let me express the thanks of the members of this committee to you, Mr. Common, and let me say that we are greatly indebted to you for your presentation here today. I know that we shall look forward with great interest to your returning to the committee to help us in our deliberations with respect to lotteries and corporal punishment.

The WITNESS: Yes.

The PRESIDING CHAIRMAN: Again I want to say that we thank you very, very much for your coming here from Toronto to help us with this matter.

The WITNESS: Thank you, sir. It was a pleasure, I can assure you.

Mr. WINCH: Might I have one second, Mr. Chairman, in which to move that the co-chairmen of this committee be authorized by this committee to name assistants to themselves in order to take their place when they are absent from either the committee or the sub-committee?

The PRESIDING CHAIRMAN: Perhaps we had better refer that thought to the sub-committee and let them consider it.

Mr. WINCH: I thought it might require action by the whole committee.

The PRESIDING CHAIRMAN: The committee is now adjourned.

APPENDIX

QUESTIONNAIRE FOR PROVINCIAL ATTORNEYS-GENERAL ON CAPITAL PUNISHMENT

1. *Trial.*

What provision is made by the province for legal aid to an accused charged with a capital offence for the purposes of his trial?

2. *Period between trial and date set for execution.*

What, generally, are the conditions of confinement of the condemned prisoner during the period between the imposition of sentence of death and the day set for execution?

3. *Appeal.*

(*a*) What information is supplied to the condemned man with respect to his right to appeal?

(*b*) What provision is made for legal aid?

(*c*) In what circumstances does the province pay all or any of the costs of appeal?

(*d*) What conditions of confinement apply during the period when the appeal is pending?

(*e*) To what extent is assistance rendered by the province to enable the accused to appeal?

4. *Post appeal period.*

What assistance is given to the convicted man in preparing a submission to the Minister of Justice for commutation of his sentence?

5. *Hanging.*

(*a*) What procedure is followed in the prison, in relation to the condemned man, after notification is received that there will be no interference in the execution of sentence until the time of execution?

(*b*) Having regard to section 1066 of the Criminal Code, what persons are ordinarily present at the execution of a sentence of death and in particular are any special provisions made with regard to the presence of relatives or members of the press?

(*c*) What provisions, if any, are made to conceal the execution from
(i) any other inmates of the prison; and
(ii) the general public.

(*d*) What practice is usually followed with regard to the administration of sedatives or drugs to the condemned man prior to execution? Under what circumstances are sedatives or drugs administered? What types or kinds of sedatives or drugs are administered?

(*e*) What disposition is ordinarily made of the body of the executed person in your province?

(*f*) What, in your experience, has been
(i) the longest,
(ii) the shortest
time to elapse between the time when the trap was sprung and the time when the condemned man was pronounced dead?

(*g*) What procedure is followed where more than one person is sentenced to be hanged at the same time? If the executions are carried out simultaneously, what special arrangements are made for this purpose?

(*h*) With respect to hangings which have taken place in your province, in the period 1930-1953, or any portion or sampling of these years, can you advise what medcial authorities have indicated to be the effective cause of death? If so, please tabulate, to the extent possible, the various effective causes of death and the number of deaths attributable to each cause?

(*i*) If statistical information in relation to question (*h*) above, is not available, can you offer an opinion as to the number or proportion of hangings in which death results from:

(i) a broken neck,

(ii) strangulation, or

(iii) any other cause.

6. *Place of execution.*

(*a*) Where are sentences of death ordinarily executed in your province?

(*b*) In your opinion, should any special provision be made for the execution of the sentences of death in specified institutions and, if so, what, in your view, should these special provisions be?

7. *Method of execution.*

(*a*) Have you any comments on the suitability of hanging as a method of executing the death sentence?

(*b*) In your view, should any alternative method of executing the sentence of death be considered as more appropriate and suitable and, if so, what method or methods would you suggest?

8. *The effects of the execution of the sentence of death.*

(*a*) In your experience, what observable effect does the execution of a sentence of death have on:

(i) the prison officers and employees or other persons in attendance?

(ii) the other inmates of the prison?

(iii) the community where the sentence of death is carried out?

(*b*) Have you any comments arising from the effects observed and set forth in answer to question (*a*)?

9. *Extension or limitation of capital punishment.*

(*a*) In your opinion, should capital punishment be imposed as an alternative punishment in respect of any offences which it is not now authorized in the Criminal Code and, if so, what offences?

(*b*) In your opinion, should the sentence of capital punishment be deleted from the Criminal Code?

(*c*) If you are of the opinion that the sentence of capital punishment should be retained, would you consider

(i) that it should not be authorized in respect of all offences for which it is presently authorized and, if so, in respect of which offences would you consider it should be deleted?

(ii) that, in respect of the offence of murder, provision should be made for an alternative punishment of life or any lesser term of imprisonment?

(*d*) If you consider that an alternative should be provided for the sentence of capital punishment, would you consider that the discretion as to sentence should be placed on the judge or the jury or that any other special provision should be made as to the exercise of this discretion?

10. *Definition of murder.*

(*a*) Should you consider that capital punishment should be retained as a sentence for a conviction of murder, would you favour any modification of the present definition of murder, whether by specifying degrees of murder or by redefining the responsibility of accessories and accomplices or in any other manner?

(*b*) Should you consider the redefinition of the offence of murder as desirable, have you any views as to the differentiation which might be made in the sentences provided for different degrees of murder and different participants in the offence of murder?

(*c*) Should any special provisions be made for the sentencing of persons charged in respect of what are called

(i) mercy killings?

(ii) suicide pacts?

(*d*) In addition to the other matters raised in this paragraph, have you any comments to make on what is sometimes called "constructive murder" and any suggestions to offer as to the redefinition of the crime of murder and the punishment therefor relating to this matter?

11. *Young persons and females.*

(*a*) In your opinion, should the death sentence be imposed upon young offenders?

(*b*) Would you consider that the Criminal Code should specify a minimum age for the application of the death sentence and, if so, what age would you consider appropriate?

(*c*) In your opinion, is it desirable to impose capital punishment on females?

(*d*) Have you any comments of a general nature on the question of the imposition of sentences of death on young persons and females?

12. *General.*

(*a*) Do you consider that the sentence of capital punishment operates as a deterrent in connection with

(i) the offence of murder?

(ii) other offences involving violence from which death might result?

(*b*) Would you consider that the same deterrent effect might result from the imposition of any lesser sentence in respect of the offence of murder?

(*c*) Do you consider that the retention of the mandatory sentence of capital puishment for murder affects the judgment of juries in murder trials to an observable extent and in any way interferes with the proper conviction of the persons charged with murder?

(*d*) Would you consider that either the abolition of capital punishment or the provision of alternative punishments where capital punishment is now prescribed would assist or hinder the administration of justice in your province?

13. *Statistical information.*

(*a*) Please set out on the attached Table A, for each of the years 1930-1953, the number of culpable homicides, together with the number of cases in which charges were laid, categorizing such charges under the headings of murder, manslaughter, infanticide and other charges, if any.

(*b*) Please set out on the attached Table B, for each of the years 1930-1953, the number of charges of murder, together with the particulars of detentions for lunacy, acquittals, convictions for lesser offences, convictions for murder, convictions quashed on appeal, commutations and executions.

(*c*) Please supply whatever explanatory comment or material you may think desirable in connection with the statistics to be set forth in tables A and B.

TABLE A—CAPITAL PUNISHMENT—HOMICIDES

Year	Number of culpable homicides	Number of charges laid	Number of charges of murder	Number of charges of manslaughter	Number of charges of infanticide	Number of other charges, if any
1930						
1931						
1932						
1933						
1934						
1935						
1936						
1937						
1938						
1939						
1940						
1941						
1942						
1943						
1944						
1945						
1946						
1947						
1948						
1949						
1950						
1951						
1952						
1953						

CAPITAL PUNISHMENT—TABLE B PARTICULARS OF MURDER CHARGES

Year	Charges of murder	Detained for lunacy	Acquittals on grounds other than insanity	Convictions for lesser offence of manslaughter, infanticide or concealment of birth under SS 951 (2) and 952	Convictions and sentences of death	Convictions quashed in appeal courts	Commutations	Executions
1930								
1931								
1932								
1933								
1934								
1935								
1936								
1937								
1938								
1939								
1940								
1941								
1942								
1943								
1944								
1945								
1946								
1947								
1948								
1949								
1950								
1951								
1952								
1953								

QUESTIONNAIRE FOR PROVINCIAL ATTORNEYS-GENERAL ON CORPORAL PUNISHMENT

A. *Corporal Punishment Under the Criminal Code.*

1. Statistical information.,

(*a*) Please set out on the attached Table A, for each of the years 1930-1953, the number of persons convicted under the Criminal Code, who were sentenced to imprisonment in penal institutions other than penitentiaries and who, in addition, were sentenced to corporal punishment.

(*b*) Please set out on the attached Table B, for each of the years 1930-1953, particulars of sentences of corporal punishment, execution of sentences and offenders sentenced as enumerated therein;

(*c*) Please indicate the reasons why any sentences of corporal punishment were not executed.

2. What regulations were in force in penal institutions in your province in respect of execution of a sentence of corporal punishment.

3. What persons are ordinarily present when the punishment of whipping is executed in a provincial institution in your province and what are their functions?

4. At what stage of the term of imprisonment is a sentence of corporal punishment usually executed?

5. What is the maximum number of strokes administered at any one session?

6. What types of instruments are used in the respective provincial institutions and what is the physical description of each such instrument?

7. What is the procedure, in detail, that is followed in executing a sentence of corporal punishment in each of the provincial institutions and what explanation is there of any variation in procedure that may exist as between different institutions?

8. Is the inmate medically examined immediately before a sentence of corporal punishment is executed and what is the extent of that examination?

9. Is the inmate medically examined at any time during the course of the execution of a sentence of corporal punishment and what is the extent of that examination?

10. Is the inmate medically examined after the execution of a sentence of corporal punishment and what is the extent of that examination?

11. Is any other medical examination given to the inmate in connection with the execution of a sentence of corporal punishment and, if so, at what time or times is the examination given and what is the nature thereof?

12. To what extent are inmates examined by psychiatrists before a sentence of corporal punishment is executed upon them?

13. Where, before corporal punishment is scheduled to be inflicted, the medical opinion is to the effect that the inmate is physically incapable of enduring the punishment or the psychiatric opinion is to the effect that to inflict the punishment would serve no useful purpose, is it the practice of the Governor of the Gaol or the Attorney General of the Province to send the opinion to the Remission Service of the Department of Justice with comments on the question whether the sentence of corporal punishment should be remitted?

88194—3½

14. In the administration of justice within the province has the Attorney General issued any instruction to Crown prosecutors that, as a matter of policy, corporal punishment should not be sought in the case of first offenders or young offenders or any other class of offenders?

15. Has the Attorney General, as a matter of policy, instructed Crown attorneys that they should, as a matter of policy, seek the imposition of corporal punishment in respect of any of the following offences: ss. 80, 204, 206, 276, 292, 293, 299, 300, 301, 302, 446, 447? If so, under what circumstances are Crown attorneys instructed to seek the imposition of corporal punishment?

16. In your opinion, does the Criminal Code now authorize the imposition of corporal punishment for any offence, in respect of which you consider that corporal punishment should not be authorized?

17. In your opinion, are there any offences in the Criminal Code for which the imposition of corporal punishment should be authorized and, in respect of which, it is not now authorized?

18. In your opinion, is it advisable to delete corporal punishment for the offences enumerated in sections 80, 206 and 292 of the present Criminal Code, as proposed in the revision now before the House of Commons in Bill No. 7?

19. Have you any comments on the use of different methods of corporal punishment, including whipping, paddling, birching or spanking and, if so, their suitability for different classes of offences and offenders?

20. In your opinion does corporal punishment operate as a deterrent to (*a*) the young offender, (*b*) the recidivist, (*c*) the sexual offender?

21. Have you any information, by way of statistics or otherwise, to indicate the effect of corporal punishment in relation to the question of recidivism?

22. In your opinion does the infliction of corporal punishment upon a person who is convicted of an offence for which, under the present law, corporal punishment may be imposed, operate as a deterrent to the offender in respect of the subsequent commission of similar offences? Alternatively, have you any views on the question whether the imposition of corporal punishment in such cases operates to embitter the offender against society more than would be the case if imprisonment only had been imposed?

23. In addition to the matters raised in the above questions, have you any comments on the use of corporal punishment as an aid to administration of justice in your province?

B. *Corporal Punishment on a disciplinary Measure in Provincial Penal Institutions.*

1. What regulations are in force in penal institutions in your province with respect to the use of corporal punishment as a disciplinary measure?

2. If no general regulations are in force, can you indicate the types of disciplinary offence in respect of which corporal punishment is ordinarily imposed?

3. Please set out on the attached Table C, for each of the years 1930-1953, the number of sentences of corporal punishment imposed for prison offences, specifying, where possible, the sentences imposed in institutions for young offenders and types of offences for which corporal punishment was imposed?

4. Do the methods or procedures followed in the administration of corporal punishment for prison offences differ from those employed on sentences under the Criminal Code and, if so, what are the differences?

5. In your opinion is it desirable to limit the imposition of corporal punishment to certain classes of disciplinary offences and, if so, what classes of offence?

6. Where corporal punishment is inflicted for prison offences, is regard had to the opinion of psychiatrists, medical doctors or other qualified personnel as to the effect of the sentence on the offender?

7. Have you any comments of a general nature on the employment of corporal punishment in relation to the administration of penal institutions in your province?

March, 1954.

TABLE A—CORPORAL PUNISHMENT

Number of Sentences of Corporal Punishment
Under Sections of the Criminal Code Enumerated Below.

Year	80	204	206	276	292	293	299	300	301	302	446	447	Total
1930													
1931													
1932													
1933													
1934													
1935													
1936													
1937													
1938													
1939													
1940													
1941													
1942													
1943													
1944													
1945													
1946													
1947													
1948													
1949													
1950													
1951													
1952													
1953													

TABLE B—CORPORAL PUNISHMENT

Particulars of Sentences of Corporal Punishment, Types of Offender, Execution of Sentence.

Year	Number of sentences	Maximum number of strokes	Minimum number of strokes	Average sentence	Age of youngest offender	Number of offenders below 20	Number of first offenders	Number of sentences not executed
1930								
1931								
1932								
1933								
1934								
1935								
1936								
1937								
1938								
1939								
1940								
1941								
1942								
1943								
1944								
1945								
1946								
1947								
1948								
1949								
1950								
1951								
1952								
1953								

TABLE C—CORPORAL PUNISHMENT

Particulars of Awards of Corporal Punishment for Disciplinary Offences in Provincial Penal Institutions

Year	Number of sentences	Maximum number of strokes	Minimum number of strokes	Average punishment	Number of sentences of offenders under 20	Number of sentences of first offenders	Number of offenders sentenced more than once	Examples of principal offences (Fill in appropriate headings)
1930								
1931								
1932								
1933								
1934								
1935								
1936								
1937								
1938								
1939								
1940								
1941								
1942								
1943								
1944								
1945								
1946								
1947								
1948								
1949								
1950								
1851								
1952								
1953								

QUESTIONNAIRE FOR PROVINCIAL ATTORNEYS-GENERAL ON LOTTERIES

1. *Statistical information.*

   (*a*) Please set out on the attached Table A, for each of the years 1930-1953, the number of persons convicted under the enumerated paragraphs of section 236 of the Criminal Code;

   (*b*) If the information is available, please set out on the attached Table A, in the column provided, the number of persons convicted for keeping a common gaming house under section 229 where the conviction involved offences in the nature of lotteries described in section 236;

   (*c*) Please set out on the attached Table B, for each of the years 1930-1953, particulars as to the disposition of chargs laid under section 236 and, if the information is available, charges under section 229 involving offences in the nature of lotteries described in section 236;

   (*d*) Please set out on the attached Table B, if the information is available, particulars as to the number of forfeitures under section 236 (3) and the total amounts forfeited;

   (*e*) Please supply whatever explanatory comment or material you may think desirable in connection with the statistics to be set forth in Tables A and B.

2. *Present enforcement policies.*

   (*a*) Has the Attorney General issued any instructions to Crown Attorneys or the police with respect to the policy to be followed in the enforcement of section 236 and section 229, in so far as the latter section pertains to offences involving lotteries?

   (*b*) If so, what is the nature of such instructions?

   (*c*) If no specific instructions or directions have been issued, are you aware of any special practices which are followed by Crown Attorneys or the police in your province in connection with the laying of charges concerning lotteries under sections 229 and 236?

   (*d*) Are any special policies or practices followed in respect of the laying of charges for lotteries conducted by religious, charitable, benevolent organizations or social clubs?

   (*e*) Are any special policies or practices followed in respect of bingo games organized and held by religious, charitable, benevolent organizations or social clubs?

   (*f*) Are any special policies or practices followed in respect of the laying of charges in connection with the sale of sweepstake tickets and, if so, is any differentiation made between
      (i) sweepstakes organized within Canada;
      (ii) sweepstakes organized within the province;
      (iii) sweepstakes organized in a foreign country?

   (*g*) Are you in possession of any statistical information as to the number of lotteries conducted in your province in the years in question which were deemed to have fallen within the exceptions enumerated in:
      (i) the proviso in respect of agricultural fairs or exhibitions contained in section 236 (1);
      (ii) the provisions of section 236 (5);
      (iii) the proviso to section 226 (1) dealing with social clubs and the use of the premises of social clubs for lotteries and games sponsored by religious and charitable organizations.

3. *Recommendations.*

(*a*) In your opinion, what specific amendments should be made to the present provisions of the Criminal Code dealing with lotteries and, in particular, sections 226 (1), in so far as it relates to lotteries, and 236, in order to assist in the administration of justice in your province?

(*b*) In connection with any proposed amendment to the present sections of the Criminal Code, would you consider that:

(i) any special provision should be made in respect of lotteries conducted by religious, charitable or benevolent organizations and, if so, what provisions would you recommend?

(ii) any special provision should be made in respect of bingo games conducted by religious, charitable or benevolent organizations and, if so, what provision would you recommend?

(iii) any special provisions should be made in respect of the sale of sweepstake tickets by organizations organized for religious, charitable or benevolent purposes, whether in Canada or foreign countries, and, if so, what provisions would you recommend?

(iv) any additional provisions should be made in respect of lotteries conducted at or in connection with argicultural fairs and exhibitions or other types of fairs and exhibitions and, if so, what provisions would you recommend?

(v) any additional provisions should be made in connection with lotteries conducted by or on the premises of social clubs, specified in the proviso to s. 226 (1) and, if so, what provisions would you recommend?

(*c*) Would you consider, in particular, that any provision should be made in the Criminal Code for the exemption of lotteries conducted by religious, charitable or benevolent organizations, or at or in connection with agricultural fairs or exhibitions or other types of fairs or exhibitions or by other types of organizations, when the conduct of such lotteries has been licenced by competent provincial authority and, if so, what provisions would you recommend?

(*d*) Have you any views on the question whether the Criminal Code should be amended to provide for the conduct of government operated lotteries for specified purposes and, if so, what provisions would you recommend?

(*e*) If you are of the opinion that under specified circumstances government operated lotteries should be permitted, to what extent would you consider it advisable to permit the conduct of lotteries by other organizations?

(*f*) Have you any comments of a general nature relating to special problems arising from the enforcement of the present sections of the Criminal Code dealing with lotteries in addition to any of the matters mentioned above, have you any suggestions as to how these problems might be obviated?

March, 1954.

TABLE A—LOTTERIES

Convictions under S-236 and S-229 of the Criminal Code

Year	236 (1) *(a)*	236 (1) *(b)*	236(1) *(bb)*	236 (1) *(c)*	236 (1) *(d)*	236 (1) *(e)*	236 (5)	229 for offences described in 236	Total
1930									
1931									
1932									
1933									
1934									
1935									
1936									
1937									
1938									
1939									
1940									
1941									
1942									
1943									
1944									
1945									
1946									
1947									
1948									
1949									
1950									
1951									
1952									
1953									

TABLE B—LOTTERIES

Disposition of charges involving lotteries under SS 236 and 229

Year	Total number of charges	Acquittals	Convictions	Convictions quashed on appeal	Number of forfeitures under S–236(3)	Amounts forfeited under S–236(3)
1930						
1931						
1932						
1933						
1934						
1935						
1936						
1937						
1938						
1939						
1940						
1941						
1942						
1943						
1944						
1945						
1946						
1947						
1948						
1949						
1950						
1951						
1952						
1953						